IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 424 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KASUMBEN W/O.LALCHAND PARDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 424 of 2002

MS BHARTIBEN for MS SUBHADRA G PATEL for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 14.12.2001 passed by the Commissioner of Police, Surat City, Surat in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said

order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered two registered offences against the detenu under the Bombay Prohibition Act and recorded statements of two anonymous witnesses. The detaining authority observed that the detenu's activities are that of a boot-legger and are detrimental to public health and public order. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. Learned Advocate for the petitioner submitted that there is nothing to indicate that there was disturbance to public order when the registered offences were committed. So far as statements are concerned, she submitted that there is no material to indicate that the power was properly exercised by the detaining authority under Section 9(2) of the PASA Act after undertaking due enquiry and verification regarding genuineness of the fear expressed by the witnesses and the need for use of power under Section 9(2) of the PASA Act, in comparison to the right of the detenu envisaged under Art. 22 of the Constitution of India. She has placed reliance on the decision of this Court in Bai Amina Vs. State of Gujarat, reported in 22 GLR 1186 and subsequent judgements wherein the said decision has been followed.

3.1 She further contended that relevant documents are not supplied to the detenu and some of the documents supplied to the detenu are not legible. She submitted that the right of the detenu of making an effective representation is therefore affected.

4. Learned Assistant Government Pleader Mr. S.S.Patel has opposed to this petition.

5. Learned AGP after verifying the compilation, in all fairness concedes that some of the pages are not legible. Thus, it is clear that the right of the detenu of making an effective representation is affected and the registered offence therefore cannot form a valid ground for exercising power under Section 3 of the PASA Act.

5.1 So far as the statements are concerned, the authority has verified the statements but there is no other material to indicate that any exercise is undertaken by the detaining authority for recording the satisfaction that the fear expressed by the witnesses qua the detenu is genuine. What is expected to be done by the authority has been clearly indicated in the cases of Bai Amina w/o Ibrahim Abdul Rahim Alla Vs. State of Gujarat, reported in 1981 GLR 1186, Chandrakant N. Patel Vs. State, reported in 1994 (1) GLR 761 (F.B) and Kajalben Sindhi & ors. Vs. Commissioner of Police, reported in 2000(2) GLR 1296. That exercise not having been undertaken by the authority concerned, the exercise of powers under Section 9(2) of the PASA Act has to be held to be improper. The right of the detenu of making an effective representation is therefore infringed. This would vitiate the detention.

6. For the foregoing reasons, the petition deserves to be allowed and the same is allowed. Order of detention dated 14.12.2001 passed by the Commissioner of Police, Surat City against the detenu is quashed and set aside. Detenu - Kusumben W/o Lalchand Pardhi be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas